S.B.Civil Writ Petition NO.1918/2004

Babulal vs. Smt. Manju Parihar & Ors.

DATE OF ORDER : - 21.4.2005

HON'BLE MR. PRAKASH TATIA,J.

Mr. Girish Sankhala, for the petitioner.

Mr. M.S. Purohit, for the respondents.

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Heard learned counsel for the petitioner.

The petitioner is aggrieved against the order dated 15.4.2004 by which the petitioner's application under Order 6 Rule 17 CPC was rejected by the trial court.

According to learned counsel for the petitioner, the petitioner sought amendment of the plaint by inserting para no.7A in the plaint and by this, the petitioner wants to plead some material facts which are relevant for deciding the controversy between the parties. By this, the nature of suit will not be changed or the scope will not be enlarged.

According to learned counsel for the petitioner, according to the incident, which happened in the year 2000, the petitioner went in depression and, therefore, he could not take the ground which he now

want to take by way of amendment by moving an application in the year 2004.

According to learned counsel for the petitioner, even after amendment of C.P.C., Andhra Pradesh High Court and Punjab & Haryana High Court have taken a view that in appropriate cases, amendment can be allowed at at any stage of the suit. Not only this, the Division Bench of this Court in the case of *Mangi Lal vs. State of Raj. & Ors.* reported in *2003(2) RLR page 704* as well as this Court (by me) in the case of *Dhanpat Ram & Ors. vs. Indra Chand* reported in *2005 WLC (1) page 145*, had taken a view that amendment can be made at any stage of the suit. It is also submitted that if there is a delay than that can be compensated by way of costs to the respondents.

The entire grievance of learned counsel for the petitioner proceeded on the assumption that the petitioner is not required to disclose any of the reason for seeking amendment of the plaint in the suit. The present suit is a suit for malicious prosecution and that was filed in the year 2002. The petitioner wants to plead about an incident which took place in the year 2000 – two years before filing of the suit. The petitioner submitted an application for amendment of the plaint when the defendant has already filed a written statement and

thereafter, the petitioner himself submitted a rejoinder to the written statement filed by the respondents. The only ground or reason for not taking the pleas in the original plaint is that by mistake, the petitioner could not take the ground or could not plead the facts which he wants to plead by amending the plaint now. The petitioner also under a wrong impression that payment of cost to the other party can be a just and valid ground for allowing any application of the plaintiff for amendment of the plaint as though the Courts are meant for convenience of the parties only and the parties need not to be vigilant in prosecuting their cases in the Court.

It is true that liberal views are taken for permitting amendment but the views are taken only to advance the cause of justice and cannot be permitted to be used by the persons who are indulged in dilatory tactics. The present case is one of the example of dilatory tactics.

The petitioner, who filed the suit for malicious prosecution in the year 2002, wants to plead a fact of 2000 in the year 2004 without showing any reason for not pleading the facts in the original plaint. It appears that the petitioner even failed to read the unamended provision of Order 6 Rule 17 C.P.C. which provides that the Court may permit amendment of the pleadings which is necessary in judicial discretion of

the Court. Even the unamended Order 6 Rule 17 CPC nowhere provides that all amendments sought shall be permitted even when there is no just reason for that.

The facts of the case clearly reveal that the amendment application has not been filed bonafide and, therefore, the trial court rightly rejected the application of the petitioner.

In view of the above discussion, I do not find any reason to interfere in the impugned order by invoking jurisdiction under Article 227 of the Constitution.

The petitioner kept the proceedings before the Court for a long period and delayed the proceedings, therefore, the present writ petition is dismissed with a costs of Rs.2,000/-.

(Prakash Tatia), J.

s.phophaliya/-